IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

OP.No. 32366 of 2002(C)

PETITIONERS:
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1. N. RAJASEKHARAN NAIR,
FORMERLY BILL COLLECTOR, S.B.T. VELLAYAMBALAM BRANCH, RESIDING AT 'VYASALI' T.C.39/349, CHAIYARA, POOJAPPURA, TRIVANDRUM.

2. V. SADASIVAN PILLAI,
FORMERLY RECORD KEEPER, SBT VELLAYAMBALAM BRANCH, RESIDING AT RANI BHAVAN, KARAKULAM, THIRUVANANTHAPURAM.

3. K. BALACHANDRAN NAIR, FORMERLY
CASHIER IN CHARGE, SBT OTTASEKHARAMANGALAM BRANCH, RESIDING AT 'KAVITHA', NEMOM P.O., THIRUVANANTHAPURAM-20.

BY ADV. SRI.G.SUDHEER

RESPONDENT:

STATE BANK OF TRAVANCORE,
REPRESENTED BY ITS MANAGING DIRECTOR,
HEAD OFFICE, POOJAPURA, THIRUVANANTHAPURAM.

BY ADV. SRI.M.PATHROSE MATHAI
SRI.SAJI VARGHESE

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 14/03/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP NO.32366/2002

ORDER IN C.M.P.NO.54766 OF 2002 IN OP NO.32366 OF 2002

DISMISSED

14/3/2007 **SD/- ANTONY DOMINIC, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE FINAL ORDER NO.DGM/T/DPS/254 DATED 28.10.2000 ISSUED BY THE DISCIPLINARY AUTHORITY.

EXT.P2: TRUE COPY OF PENSIONORDER DATED 4.10.2001 ISSUED BY THE CHIEF MANAGER (PPG) TO THE 1ST PETITIONER.

EXT.P3; TRUE COPY OF REPRESENTATION DATED 24.11.2001 SENT BY THE 1ST PETITIONER TO THE MANAGING DIRECTOR.

EXT.P4: TRUE COPY OF PENSION ORDER DATED 22.3.2002 ISSUED BY THE DEPUTY GENERAL MANAGER (F&A) TO THE 1ST PETITIONER.

EXT.P5: TRUE COPY FO NOTICE SENT BY THE ADVOCATE K.S.GOPINATHAN TO THE MANAGING DIRECTOR DATED 4.7.2002.

EXT.P6: TRUE COPY OF REPLY SENT BY THE CHIEF MANAGER TO THE ADVOCATE K.S.GOPINATHAN DATED 6.9.2002.

//TRUE COPY//

Antony Dominic, J.

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O.P.No.32366 of 2002

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Dated this the 14th day of March, 2007.

JUDGMENT

This Writ Petition is filed seeking to quash Exts.P4 and P4(a) and to declare that the first petitioner is entitled to get full eligible pension. It is also contended that petitioners 1 to 3 are entitled to get monetary benefits in respect of the accumulated privilege leave.

2. As far as the first petitioner is concerned, the facts reveal that while working as a Bill Collector in the Vellayambalam Branch of the first respondent – Bank, he had committed certain misconducts and was placed under suspension on 22.12.1999. In the disciplinary action that followed, he was found guilty and it was proposed to dismiss him from service. However, the Disciplinary Authority chose to impose a punishment of discharge from service as per Ext.P1 order dated 28.10.2000.

3. It would appear that eventually the first petitioner was served with Ext.P4(a). From Ext.P4(a), it was inferred that in terms of Rule 33 of the State Bank of Travancore (Employees') Pension Regulations,1955, (hereinafter referred to as "the Pension Regulations") 1/3rd of the pension due to the first petitioner will be

withheld and it is seeking to quash Ext.P4(a) that this Writ Petition was filed by him. As far as petitioners 2 and 3 are concerned, they were also employees of the first respondent – Bank against whom disciplinary actions were initiated on separate sets of charges and were also found guilty. Even though punishment of discharge was imposed on them, full pension was granted to these petitioners in terms of the provisions contained in the Pension Regulations. In so far as all these petitioners are concerned, they were denied the benefit of accumulated privilege leave and that is the common grievance for all of the petitioners.

4. Counsel for the petitioners submitted that in so far as first petitioner is concerned, Ext.P4(a) is vitiated for the reason that the order itself shows that normally a person, who retires from the service, is entitled to full pension. Petitioners 2 and 3 were also proceeded with disciplinary proceedings and though they were also discharged from service as the first petitioner, they were granted full pension but the first petitioner alone has been discriminated and 1/3rd pension has been withheld. The further contention is that in terms of the Pension Regulations, although before withholding the pension, the Executive Committee ought to have been consulted, that requirement has not been complied with. Lastly, it was contended that withholding of

pension was imposed on the first petitioner without affording him an opportunity of hearing and for that reason, Ext.P4(a) is bad. He would continue to submit that in so far as the claim of all the petitioners for accumulated privilege leave is concerned, their discharge from service entitled them to all superannuation benefits and therefore there is no reason to have declined the benefit of accumulated privilege leave to the petitioners.

5. Counsel for the respondents pointed out the encashment of privilege leave is permissible only as per the terms contained in the Bipartite settlements between the Bank and the Unions. It is pointed out that such encashment is provided only in respect of those who retired from service and not to those who ceased to be in service for reasons such as discharge, etc.

6. In so far as the contention of the first petitioner against the withholding of 1/3rd pension is concerned, the learned counsel would submit that discharge was incorporated as a punishment through the sixth Bipartite Settlement dated 14.2.1995 and that Pension Regulations, 1995 were notified only on 23.3.1996. According to the counsel, in the Pension Regulations, no specific provision has been incorporated providing for pensionary benefits for those employees, who are discharged from service by way of punishment. Counsel would

therefore submit that despite the non-inclusion of the employees like the first petitioner, the Bank has taken a lenient view and treated the first petitioner on a par with those compulsorily retired from service and benefits have been granted to him on that basis. Regarding the plea that the Executive Committee was not consulted before 1/3rd pension was ordered to be withheld, counsel submitted that the Executive Committee considered the matter on 13.9.2001 and that the order withholding of pension was issued only on 26.9.2001.

7. It is argued that the Rules did not provide for an opportunity of hearing and therefore, the first petitioner cannot claim to be heard before pension is withheld. As regards the plea of the first petitioner that despite imposition of punishment of discharge on petitioners 2 and 3, they were granted full pension and that the first petitioner alone was discriminated in the matter, the counsel argued that all the petitioners were proceeded for separate sets of charges and therefore the gravity of the misconduct varied in each case. According to the counsel, in view of the difference in the gravity of misconduct proved, the Bank was justified in withholding of pension only in the case of the first petitioner.

8. I have considered the submissions made by counsel on either side.

9. The grievance that is common to all the petitioners is regarding the encashment of accumulated privilege leave. It is true that this benefit has been denied to all the petitioners. As already noted herein above, encashment of the accumulated privilege leave was a benefit provided under the Bipartite Settlement, which is binding on the parties in view of the provisions contained in the Industrial Disputes Act. The workmen cannot claim anything more than what is provided for in the Settlement. In this case, it is pointed out that Clause 15 of the Second Bipartite Settlement dated 31.10.1979 provided for encashment of accumulated privilege leave. The above Clause provided that a workman is entitled to encash leave to his credit at the time of retirement.
In this case, it is not the case of any of the petitioners that they had retired in the normal course by attaining the age of superannuation. Such being the situation, the petitioners having not retired from service as provided for in the Settlement, none of the petitioners can claim the benefit of encashment of accumulated privilege leave. Therefore,the first grievance of the petitioners as highlighted in the Writ Petition has no substance.

10. What remains to be considered is the justifiability of withholding of 1/3rd pension imposed on the first petitioner. It is true

that in the sixth Bipartite Settlement dated 14.2.1996, the following punishment was incorporated, for gross misconduct:

> "21. (iv)(b) be compulsorily retired/removed from service/discharged with superannuation benefits as would be due otherwise at that stage and without disqualification from future employment;"

It was thereafter on 23.3.1996 that the Pension Regulations, 1995 were notified by the Bank. Chapter V of the Pension Regulations provides for classes of pension and this includes superannuation pension, pension on voluntary retirement, invalid pension, compassionate allowance, premature retirement pension and compulsory retirement pension.

11. What is to be noted is that although it was through Clause 21(iv)(b) of the settlement mentioned above punishments of compulsory retirement, removal from service and discharges from service were introduced, specific provision for pension is provided only for those employees who have been compulsorily retired from service. It is on the above basis that the contention is raised by the counsel for the Bank that strictly in terms of the Pension Regulations, the first petitioner having been discharged from service, is not entitled to the benefit of pension at all. It is contended that despite the ineligibility of the first petitioner, taking a lenient view in his case, the Bank has

granted pension equivalent to what is payable to an employee, who has been compulsorily retired. This submission of the counsel is countered by the counsel for the petitioner contending that employees, who have been discharged from service, have to be treated as having retired with all superannuation benefits, as would be due to them otherwise at that stage. According to him, his client is entitled to be treated as having normally retired and therefore, should be paid full eligible pension.

12. It is true that no specific provision in the Pension Regulations has been made covering the employees, who have been discharged or removed from service, but however, the conduct of the Bank itself would indicate that they have not classified such categories of employees as ineligible for pension either fully or partially. Petitioners 2 and 3 were also discharged from service following findings of misconducts against them and they were paid full pension. This is being projected by the first petitioner to assert his entitlement to be treated on a par with the other petitioners. He has raised this plea in paragraphs 3 and 4 and ground E of the Writ Petition. Though the first respondent has filed counter affidavit in the case, these averments of the first petitioner have not been controverted. In fact, all that they have stated in their counter affidavit is as follows: "The

contentions in grounds E and F are denied as unsustainable." If according to the Bank, a person who discharged from service is either ineligible or his eligibility is confined to what is eligible to a person, who has been compulsorily retired, I see no reason why full pension has been paid to petitioners 2 and 3. So long as the Bank does not deny the averments of the first petitioner in this behalf, nor do they even contend that such payments were erroneous, I have to assume that such payments were made as per the provisions of the Pension regulations and hold that the first petitioner is also entitled to be paid pension on a par with petitioners 2 and 3. Hence, I have to conclude that the first petitioner is also entitled to be paid full pension without any part of it being withheld.

13. As already noted, the first petitioner urged a contention that he has been discriminated. Although counsel for the Bank would contend that he has been proceeded against on separate set of charges, the question is whether the first petitioner has been discriminated in the matter of disbursement of superannuation benefits. Gravity of the misconduct can have relevance for the imposition of punishment and once all are discharged from service, there cannot be any further discrimination in the matter of grant of terminal benefits. I find no reason why the first petitioner was treated

differently in the matter of pension as compared to employees who have been imposed similar punishment of discharge. The rest of the contentions of the petitioner regarding the failure to consult the Executive Committee and absence of hearing, loses its significance in view of my findings herein above.

11. In the circumstances, I declare that the first petitioner is entitled to full eligible pension in accordance with the State Bank of Travancore (Employees') Pension Regulations, 1995 and the respondent is directed to sanction and disburse all consequential benefits to the first petitioner, within a period of two months from the date of receipt of a copy of this judgment. The claim of the petitioners for the monetary benefit of encashing their accumulated privilege leave is devoid of merit and they are not entitled to the same.

In the result, the Original Petition will stand allowed in the above terms. No costs.

Antony Dominic
Judge.

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